

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

DANIEL P. KANAAN,

Plaintiff,

v

Case No. 2:12-cv-11680-JCO-LJM

Honorable Gershwin A. Drain

**MICHAEL A. FALSETTI, KRISTIN
JOHNSON, KEITH STONE, JONATHAN
SIRKEN, NATHAN ZAUTCKE, ADAM
WIENER, DOMINIC FALSETTI,
ADVANCED COMMUNICATIONS, INC.**
a Michigan corporation, **M&D AUTO, LLC**,
a Michigan limited liability company,
FKS PROPERTIES, LLC, a Michigan
limited liability company, **FALKAN
ENTERPRISES, LLC**, a Michigan
limited liability company; and **UNNAMED
COCONSPIRATORS JOHN and JANE
DOES 1 through 100**, jointly and individually,

**NOTICE OF PRESENTMENT
UNDER SEVEN DAY LR 58.1**

Defendants.

Lynn M. Brimer (P43291)
George S. Fish (P51298)
Strobl & Sharp, P.C.
Attorneys for Plaintiff
300 East Long Lake Road, Suite 200
Bloomfield Hills MI 48304-2376
(248) 205-2764 Fax (248) 205-2788
lbrimer@stroblpc.com
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William D. Gilbride, Jr. (P36830)
Abbott Nicholson
Attorneys for Defendants Advanced
Communications, Inc., M & D Auto, LLC,
FKS Properties, LLC, Falkan Enterprises, LLC
300 River Place, Suite 3000
Detroit, MI 482107-4225
(313) 566-2500
wdgilbride@abottnisholson.com

David Griem (P43291)
Attorneys for Defendant, M. Falsetti
500 Griswold Avenue, Suite 2400
Detroit, MI 48226
(313) 961-1200
dgriem@jafferaitt.com

NOTICE OF PRESENTMENT UNDER SEVEN DAY LR 58.1

**To: William D. Gilbride, Jr., Esq.
David Griem, Esq.**

PLEASE TAKE NOTICE that if no written objections are filed with the Clerk of the Court and served upon Plaintiff's counsel within seven (7) days of service of this Notice, the Clerk of the Court will present the attached proposed Judgment to the Court for signature and entry.

Respectfully submitted,

Strobl & Sharp, P.C.

/s/Lynn M. Brimer

Lynn M. Brimer (P43291)

Attorneys for Plaintiff

300 East Long Lake Road, Suite 200

Bloomfield Hills MI 48304-2376

(248) 205-2764 Fax (248) 205-2788

lbrimer@stroblpc.com

Dated: May 1, 2014

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ECF Certificate of Service

I hereby certify that on May 1, 2014, I did electronically file the foregoing document with the Clerk of the Court using the ECF System which will send notification of such filing to all attorneys of record, and I hereby certify that I have mailed the foregoing document to the non-ECF participants via United States Mail.

/s/ Karel J. Van Akin

Karel J. Van Akin

UNITED STATES DISTRICT COURT
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a Michigan corporation, **M&D AUTO, LLC**,
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limited liability company, **FALKAN
ENTERPRISES, LLC**, a Michigan
limited liability company; and **UNNAMED
COCONSPIRATORS JOHN and JANE
DOES 1 through 100**, jointly and individually,

JUDGMENT

Defendants.

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George S. Fish (P51298)
Strobl & Sharp, P.C.
Attorneys for Plaintiff
300 East Long Lake Road, Suite 200
Bloomfield Hills MI 48304-2376
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Attorneys for Defendant, M. Falsetti
500 Griswold Avenue, Suite 2400
Detroit, MI 48226
(313) 961-1200
dgriem@jafferaitt.com

JUDGMENT

WHEREAS, on or about April 15, 2013, the parties to this matter entered into a settlement agreement April 15, 2013 resolving all issues (the “Settlement Agreement”) a copy of which is attached as Exhibit A.

WHEREAS, the Settlement Agreement contained an indemnification provision requiring Defendant Michael Falsetti (“Falsetti”) to indemnify Plaintiff Daniel Kanaan (“Kanaan”) for any and all unpaid federal, state and local tax liabilities of M&D, Auto, LLC FKS, LLC and/or Falkan, LLC of any type and or nature, including income, Michigan Business Tax, Single Business Tax, sales, use, and/or employment tax liabilities. Moreover, the Settlement Agreement provides that “[i]n the event any taxing authority proposes the assessment or makes the assessment of any tax corporate liability of M&D, FKS and/or Falkan against Kanaan, [Falsetti], his successors and assigns will indemnify and hold harmless Kanaan his heirs, successors, estate, agents, representatives, and assigns from and against any and all such claims, liabilities, losses, costs or expenses, including but not limited to reasonable attorney fees and related costs and expenses, and damages, whether known or unknown, joint or several, related to or arising in any manner whatsoever to the unpaid tax liabilities of M&D, FKS and/or Falkan. Kanaan may, in his sole discretion, engage at the expense of [Falsetti], separate counsel in connection with any proposed or actual assessment of tax to which this indemnification may relate.”

WHEREAS, the Settlement Agreement further provides that Kanaan is entitled to judgment against Falsetti in the event of a default which was not cured within ten (10) business days.

WHEREAS, Kanaan has made repeated demands for payment of his legal fees under the indemnification provisions of the Settlement Agreement as evidence by the Affidavit of Lynn M. Brimer attached hereto as Exhibit B.

WHEREAS, on April 11, 2014, Kanaan forwarded demand for payment of his legal fees in the amount of \$10,035.50 to Falsetti.

WHEREAS, pursuant to the attached Affidavit of Lynn M. Brimer Falsetti has failed to pay Kanaan's legal fees and more than 10 business days have passed since demand for payment was made on April 11, 2014.

WHEREAS, pursuant to the Settlement Agreement, Falsetti waived all rights to appeal the entry of a judgment in the event of a default under the indemnification provisions of the Settlement Agreement,

THIS COURT finding that it is a court of competent jurisdiction and that there is good cause for the entry of this judgment:

NOW THEREFORE,


IT IS HEREBY ORDERED AND ADJUED that judgment be and hereby is entered in favor of Plaintiff Daniel Kanaan and against Defendant Michael Falsetti in the amount of \$10,035.50, plus interest from the date hereof until paid in full plus all continuing legal fees and costs incurred by Plaintiff as set forth in the Settlement Agreement or incurred in the collection of this Judgment.

IT IS FURTHER ORDERED that this Order is of immediate force and effect.

EXHIBIT A

**SETTLEMENT AGREEMENT
AND MUTUAL RELEASE OF CLAIMS**

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS (the "Agreement"), is made effective as of the latest date below written, by and among **DANIEL P. KANAAN** ("Kanaan" and/or "Plaintiff"), an individual residing in Wayne County, Michigan, and **CANTON WIND-DOWN COMPANY, f/k/a ADVANCED COMMUNICATIONS, INC. ("ACI")**, a Michigan corporation with its principal place of business in Wayne County, Michigan, **M&D Auto, LLC, ("M&D")**, a Michigan limited liability company with its principal place of business in Wayne County, Michigan, **FKS PROPERTIES, LLC, ("FKS")** a Michigan limited liability company with its principal place of business in Wayne County, Michigan, **FALKAN ENTERPRISES, LLC ("Falkan")**, a Michigan limited liability company with its principal place of business in Wayne County, Michigan, **MICHAEL FALSETTI ("MFalsetti")**, an individual residing in Wayne County, Michigan, **KEITH STONE ("Stone")**, an individual residing in Genesee County, Michigan, **JONATHAN SIRKEN ("Sirken")**, an individual residing in Wayne County, Michigan, **NATHAN ZAUTCKE ("Zautcke")**, an individual residing in Wayne County, Michigan, **ADAM WIENER ("Wiener")**, an individual residing in Wayne County, Michigan, and **DOMINIC FALSETTI ("DFalsetti")**, an individual residing in Wayne County, Michigan, (collectively, M&D, FKS, Falkan, MFalsetti, Stone, Sirken, Zautcke, Wiener and DFalsetti may be referred to as "**Defendants**") (collectively, the Plaintiff and Defendants shall from time-to-time individually be referred to as the "Party" and collectively shall be referred to as the "Parties").


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WHEREAS, ACI is a Michigan corporation incorporated in 1984. MFalsetti was one of the original shareholders in ACI.

WHEREAS, in about 1984, Kanaan was hired by ACI and was given an equity interest in the Company.

WHEREAS, sometime prior to 1997, Kanaan became the 40% shareholder of ACI and MFalsetti became the 60% shareholder of ACI.

WHEREAS, in connection with certain obligations owed by ACI to PNC Bank, National Association, as successor in interest to National City and as Lender and Agent for Lender ("PNC"), the assets of ACI were surrendered to PNC in October 2012;

WHEREAS, ACI is no longer operating;

WHEREAS, Falkan was organized by Kanaan and MFalsetti in 2004 with each owning a fifty percent (50%) interest in the company.

WHEREAS, Falkan owned the property located at 5711 Research Drive, Canton, Michigan (the "Research Drive Property"), out of which ACI conducted its business, as well as the adjacent vacant property.

WHEREAS, on about January 10, 2013, Falkan conveyed the Research Drive Property to Aero Communications Real Estate, Inc., in satisfaction of certain obligations owed by Falkan to PNC;

WHEREAS, Falkan no longer owns any assets and conducts no operations;

WHEREAS, M&D was organized by Kanaan and MFalsetti on or about October 17, 2002, with each owning a fifty percent (50%) membership interest in the company.

WHEREAS, FKS was organized by Kanaan, MFalsetti and Mark Saker ("Saker") in April 2001, with Saker owning a twenty-five percent (25%) membership interest and each Kanaan and MFalsetti each owning a thirty-seven and one-half percent (37.5%) membership interest in the company.

WHEREAS, in September 2009, Saker assigned and transferred his interest in FKS equally to Kanaan and MFalsetti such that Kanaan and MFalsetti each owned a fifty percent (50%) membership interest in the company.

WHEREAS, on October 27, 2006, FKS entered into a land contract for the purchase of the property located at 44146 Michigan Avenue, Canton, Michigan, which is the property out of which M&D operates.

WHEREAS, Falsetti was the President and Chief Executive Officer of ACI until the surrender of its assets in October 2012.

WHEREAS, Kanaan was the Executive Vice-President and Chief Operating Officer of ACI until his resignation on October 14, 2011.

WHEREAS, Stone, Sirken, Zautcke, Weiner, and DFalsetti were all employees of ACI.

WHEREAS, Zautcke was also an employee of M&D until about October, 2012.

WHEREAS, on about December 28, 2011, PNC filed suit against Kanaan in connection with an alleged personal guaranty of the ACI obligations owed to PNC in the United States District Court for the Eastern District of Pennsylvania, styled, *PNC Bank*,

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National Association, as Successor in Interest to National City Bank and as Lender and as Agent for Lenders v. Daniel Kanaan (the "Pennsylvania Litigation").

WHEREAS, Kanaan filed a Third Party Complaint against ACI and MFalsetti for contribution in the Pennsylvania Litigation.

WHEREAS, on or about April 15, 2012, Kanaan filed suit against the Defendants in the United States District Court for the Eastern District of Michigan styled *Daniel P. Kanaan v. Michael A. Falsetti, et al*, (Docket No. 12-11680) (the "Michigan Litigation").

WHEREAS, the parties to the Pennsylvania Litigation engaged in extensive settlement negotiations.

WHEREAS, on January 10, 2013, the parties to the Pennsylvania Litigation entered into various agreements and documents settling the Pennsylvania Litigation.

WHEREAS, there exists a legitimate dispute between the Plaintiff and the Defendants regarding the issues raised in the Michigan Litigation.

WHEREAS, the Parties have determined it is in their best interests to settle the disputes raised in the Michigan Litigation.

WHEREAS, the Parties have arrived upon a basis of settlement with respect to all claims and potential counterclaims raised in the Michigan Litigation.

NOW, THEREFORE, in consideration of the promises, covenants, and undertakings herein contained, the receipt and adequacy of which the Parties confess and acknowledge, the Parties agree as follows:

1. Transfer of Kanaan Membership Interests in M&D and FKS

② 4-15-13

Contemporaneous with the execution of this Agreement, Kanaan shall execute an assignment to MFalsetti in the form attached hereto as Exhibit A (the "Assignment") of his outstanding membership interests in M&D and FKS (collectively, the "Equity Interests"). The Assignment shall be held in escrow by Strobl and Sharp, P.C. ("Strobl") pending the satisfaction of the contingencies set forth herein. Upon receipt of an Affidavit from MFalsetti confirming that the contingencies to this Agreement have been satisfied (the "MFalsetti Affidavit"), Strobl shall notify Kanaan that MFalsetti has satisfied the contingencies. Kanaan shall have 10 business days to dispute the MFalsetti Affidavit by delivering before the close of business on the tenth (10th) business day following delivery of the MFalsetti Affidavit a document setting forth Kanaan's basis for disputing the MFalsetti Affidavit. In the event Kanaan does not timely dispute the Falsetti Affidavit, Strobl shall transfer the Assignment to Falsetti. In the event Kanaan timely disputes the Falsetti Affidavit, the parties agree to resolve the dispute through the Michigan Litigation.

Within ten (10) business days of the execution of this Agreement, Kanaan shall deliver to counsel for ACI copies of any and all books and records of M&D, FKS and/or Falkan in his possession and shall provide MFalsetti an Affidavit (the "Kanaan Affidavit") stating that he has delivered all required records in his possession.

2. Preparation of Tax Returns

Within sixty (60) days of the execution of this Agreement, Falsetti shall prepare and file with the Internal Revenue Service ("IRS") the 2011 and 2012 Forms 1065, U.S. Return of Partnership Income, for M&D, FKS and Falkan (the "Federal Returns") and all required state and local tax return (collectively the Federal Returns and the required state and local

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returns shall be referred to as the "Tax Returns) and the 2013 Final Forms K1, Partner's Share of Income, Deductions, Credits, etc., for M&D, FKS and Falkan (the "Final K1s").. MFalsetti shall provide Kanaan with a copy of the Forms 1065, the associated Forms K1s, and the Final K1s ten (10) business days prior to filing of the returns with the IRS. Kanaan shall have ten (10) business days from receipt of the Tax Returns and Final K1s to review the Federal Returns prior to their submission to the IRS. In the event Kanaan's review of the Federal Returns raises questions for Kanaan regarding the accuracy of the information contained therein, Kanaan shall provide MFalsetti with a written request for supporting documentation regarding the questioned items on the returns. MFalsetti shall have fifteen (15) business days to provide Kanaan with the requested documentation. Kanaan shall have thirty (30) business days to review the documentation and to provide MFalsetti with a written statement in response to the documentation provided and his position statement regarding the accuracy of the Tax Returns. MFalsetti shall not submit the Federal Returns to the IRS until all questions and/or concerns raised by Kanaan are resolved to the parties mutual satisfaction, in good faith and in the exercise of reasonable discretion; provided, however and notwithstanding anything herein to the contrary, MFalsetti shall have the right to file the Tax Returns by the due date, plus any extensions, or the date otherwise required by the IRS. Upon the resolution of any concerns raised relative to the Tax Returns by Kanaan, MFalsetti shall submit the Tax Returns or if previously filed the applicable amended Tax Returns to the applicable taxing authority. Within ten (10) business days of the filing of the Tax Returns, MFalsetti shall provide Kanaan with the MFalsetti Affidavit.

3. Indemnification

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MFalsetti shall be responsible for any and all unpaid federal, state and local tax liabilities of M&D, FKS and/or Falkan of any type and or nature, including income, Michigan Business Tax, Single Business Tax, sales, use, and/or employment tax liabilities. In the event any taxing authority proposes the assessment or makes the assessment of any tax corporate liability of M&D, FKS and/or Falkan against Kanaan, MFalsetti his successors and assigns will indemnify and hold harmless Kanaan his heirs, successors, estate, agents, representatives, and assigns from and against any and all such claims, liabilities, losses, costs or expenses, including but not limited to reasonable attorney fees and related costs and expenses, and damages, whether known or unknown, joint or several, related to or arising in any manner whatsoever to the unpaid tax liabilities of M&D, FKS and/or Falkan. Kanaan may, in his sole discretion, engage at the expense of MFalsetti, separate counsel in connection with any proposed or actual assessment of tax to which this indemnification may relate.

4. Dismissal of The Michigan Litigation

a. **Dismissal without Prejudice.** Contemporaneous with the execution of this Settlement Agreement, the Parties shall execute a Stipulation of Voluntary Dismissal without Prejudice in a form substantially similar to Exhibit B. Within two (2) business days following the execution of this Settlement Agreement by all Parties, along with any associated documents incorporated herein by reference, Plaintiff shall submit the Voluntary Stipulation for Dismissal without Prejudice to the Court in the Michigan Litigation. In the event MFalsetti fails to timely provide Kanaan with the Tax Returns as provided in paragraph 2 herein, Kanaan shall, in his sole discretion file a motion to reinstate the

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Michigan Litigation due to the failure of the parties to comply with the contingencies in the Settlement Agreement.

b. **Dismissal with Prejudice..** Also contemporaneous with the Execution of this Settlement Agreement, the Parties shall execute a Stipulation of Counsel for Voluntary Dismissal with Prejudice and Without Costs (the "Escrowed Dismissal") in the form substantially similar to Exhibit C. Plaintiff shall hold the Escrowed Dismissal in escrow pending the preparation, approval and filing of the Tax Returns with the applicable tax authority as set forth in paragraph 2 herein. MFalsetti shall upon the filing of the Tax Returns provide Kanaan with notice that all Tax Returns have been submitted to the appropriate taxing authority. Within two (2) business days of receipt of notice from Falsetti that all Tax Returns have been filed, Kanaan shall submit the Escrowed Dismissal with the United States District Court for the Eastern District of Michigan and shall serve a copy of such on all counsel of record.

5. **No Admissions.** It is hereby agreed and understood by the Parties that neither the Plaintiff nor the Defendants admit any liability or wrongdoing with respect to any matter whatsoever, and that the consideration of this Agreement is given to mutually resolve the disputed Claims.

6. **Mutual Release.** For and in consideration of the mutual agreements contained herein, and upon the satisfaction of the obligations set forth it is further agreed that:

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a. **Definitions:** For purposes of this Agreement, and specifically, this Paragraph 6, the following definitions apply:

(i) **Plaintiffs:** The term "Plaintiff" means Kanaan, his heirs, predecessors, assigns, beneficiaries, trustees, delegates, legatees, appointees, and/or any other successor in interest, however defined, to any of his, it's or their interests or rights of any kind whatsoever.

(ii) **Defendants:** The term "Defendants" means ACI, M&D, FKS, Falkan, MFalsetti, Stone, Sirken, Zautcke, Wiener, DFalsett, his it's or their heirs, successors, predecessors, assigns, beneficiaries, trustees, delegates, legatees, appointees, personal representatives and/or any other successor in interest, however defined, to any of his or their interests or rights of any kind whatsoever.

(iii) **Claims:** The term "Claims" is broadly defined as any or all of the known or unknown demands, actions, causes of action, suits, arbitrations, debts, dues, sums of money, accounts due, sums of monies, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, variances, trespasses, damages, judgments, extents, executions, obligations, complaints, and liabilities, whatsoever, whether in law or in equity or any combination thereof, whether compulsory or permissive, whether sounding in tort, contract (including but not limited to claims for breach of an implied or expressed warranty), fraud, statutory or

regulatory violation, or any combination of the foregoing or other theories, that the Plaintiff and Defendants ever had, or now have, against any Party named in the Michigan Litigation for, upon, or by reason of any matter or cause whatsoever, whether known or unknown, up to and including the date of this agreement, without limiting the generality of the foregoing, that are the subject of the Michigan Litigation, and further, without limiting the generality of the foregoing, any claim for any indemnification or repayment, however styled, of any monies paid pursuant to this Agreement.

b. **Mutual Release:** For and in consideration of the agreements made by the Plaintiff and the Defendants hereunder, and for other good and valuable consideration, the receipt and adequacy of which is acknowledged, the Plaintiff hereby expressly releases, acquits, and forever discharges the Defendants of all Claims, and the Defendants hereby expressly release, acquit, and forever discharge the Plaintiff of all Claims..

7. **Events of Default.**

a. In the event Falsetti fails to timely prepare and file the Tax Returns as required in paragraph 2, Kanaan shall advised the Court in the Michigan Litigation that the stay of proceedings is no longer in effect. Upon the termination of the stay of proceedings, the Parties shall, at their discretion, engage in discovery and proceed with the Michigan Litigation.

b. In the event of a default by MFalsetti, after notice and demand which is not cured within ten (10) business days, to indemnify Kanaan as required herein, MFalsetti

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hereby authorizes the entry in any court of competent jurisdiction and waives notice of such, the issuance of process and service of process and confession of judgment against him, in favor of Kanaan or any holder of Kanaan's claim for the full amount due under the indemnification agreement herein, together with interest thereon as provided by law, and for all costs of enforcement, and waives all rights to appeal.

c. In the event Kanaan fails to timely submit any documents to the Court as required herein, the Defendants shall have the authority to submit such document(s) to the Court on behalf of the Plaintiff.

8. Waiver.

Failure by any Party to enforce any of the remedies provided to it in this Agreement shall not be deemed a waiver of such rights.

9. Further Assurances.

The Parties shall sign and deliver to each other such further documents, and take such further action as may be reasonably necessary to carry out the intent of this Settlement Agreement.

10. Binding Nature.

This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their heirs, successors, and assigns.

11. Choice of Law.

This Agreement shall be construed under the laws of the State of Michigan.

12. Interpretation.

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Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, and the Parties agree to take any and all steps which are necessary in order to enforce the provisions hereof. Any ambiguous language in this Agreement will not be construed against any particular Party as the drafter of such language. In the event any portion of this Agreement is deemed invalid for any reason, such defect shall not be deemed to affect the validity of any other term or condition herein.

13. Modifications.

No modification shall be of any force or effect whatsoever unless first reduced to writing and signed by each of the parties hereto.

14. Merger.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements.

15. Copies.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall be considered one instrument and shall become binding when one or more counterparts have been signed by each of the Parties and delivered to the other. A facsimile, photocopy or electronic copy of a Party's signature shall be evidence of the original signature to this Settlement Agreement.

16. Consultation with Counsel.



The Parties hereto acknowledge that they have been given the opportunity to consult with counsel before executing this Agreement and are executing such Agreement without duress or coercion and without reliance on any other representations, warranties or commitments other than those representations, warranties and commitments set forth in this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the latest date so written.

**CANTON WIND-DOWN COMPANY, f/k/a
ADVANCED COMMUNICATIONS, INC., a
Michigan corporation**

By: _____
Its: _____

STATE OF MICHIGAN)
COUNTY OF _____)

Subscribed and sworn to before me this _____ day of March 2013 by _____ on behalf of Canton Wind-down Company f/k/a Advanced Communications, Inc., a Michigan corporation.

_____, Notary Public
_____, Michigan
Acting in _____ County, Michigan
My Commission expires: _____

**M&D AUTO, LLC, a Michigan limited
liability company**

 4-15-13

[Signature]
By: _____
Its: _____

STATE OF MICHIGAN)
COUNTY OF WAYNE)

Subscribed and sworn to before me this 15th day of APRIL ~~March~~ 2013 by
MICHAEL A. FALSETTI on behalf of M&D Auto, LLC, a Michigan limited liability company.

Karen Ann Hart
KAREN ANN HART
Notary Public, State of Michigan
County of Oakland
Acting in the County of Wayne
My Commission Expires Dec. 6, 2018

FKS PROPERTIES, LLC, a Michigan
limited liability company

[Signature]
By: _____
Its: _____

STATE OF MICHIGAN)
COUNTY OF Wayne)

Subscribed and sworn to before me this 15th day of APRIL ~~March~~ 2013 by
MICHAEL FALSETTI on behalf of FKS, LLC, a Michigan limited liability company.

Karen Ann Hart
_____, Notary Public
_____, Michigan
Acting in _____ County, Michigan
My Commission expires: _____

KAREN ANN HART
Notary Public, State of Michigan
County of Oakland
Acting in the County of Wayne
My Commission Expires Dec. 6, 2018

FALKAN ENTERPRISES, LLC, a
Michigan limited liability company

[Signature]
By: _____
Its: _____

STATE OF MICHIGAN)
COUNTY OF Wayne)

Subscribed and sworn to before me this 15th day of APRIL ~~March~~ 2013 by
MICHAEL A. FALSETTI on behalf of Falkan, LLC, a Michigan limited liability company.

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4-15-13

Karen Ann Hart
_____, Notary Public
_____, Michigan
Acting in _____ County, Michigan
My Commission expires: _____

KAREN ANN HART
Notary Public, State of Michigan
County of Oakland
Acting in the County of Wayne
My Commission Expires Dec. 6, 2018

DANIEL P. KANAAN

STATE OF MICHIGAN)
COUNTY OF _____)

Subscribed and sworn to before me this _____ day of March 2013 by Daniel P. Kanaan, individually.

_____, Notary Public
_____, Michigan
Acting in _____ County, Michigan
My Commission expires: _____

Michael Falsetti
MICHAEL FALSETTI

STATE OF MICHIGAN)
COUNTY OF Wayne)

Subscribed and sworn to before me this 15TH day of APRIL 2013 by Michael Falsetti, individually.

Karen Ann Hart
_____, Notary Public
_____, Michigan

KAREN ANN HART
Notary Public, State of Michigan
County of Oakland
Acting in the County of Wayne
My Commission Expires Dec. 6, 2018

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4-15-13

Acting in _____ County, Michigan
My Commission expires: _____

 4-15-13

KEITH STONE

STATE OF MICHIGAN)
COUNTY OF _____)

Subscribed and sworn to before me this _____ day of March 2013 by Keith Stone,
individually.

_____, Notary Public
_____, Michigan
Acting in _____ County, Michigan
My Commission expires: _____

Jonathan Sirken
JONATHAN SIRKEN

STATE OF MICHIGAN)
COUNTY OF Wayne)

Subscribed and sworn to before me this 31 day of March 2013 by Jonathan
Sirken, individually.

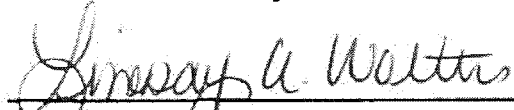
Lindsay A. Wolters
_____, Notary Public
Canton, Michigan
Acting in Wayne County, Michigan
My Commission expires: 10/9/2014

LINDSAY A. WOLTERS
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Oct 9, 2014
ACTING IN COUNTY OF Wayne


NATHAN ZAUTCKE

STATE OF MICHIGAN)
COUNTY OF Wayne)

Subscribed and sworn to before me this 31 day of March 2013 by Nathan Zautcke, individually.

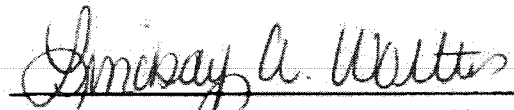

_____, Notary Public
_____, Michigan
Acting in Wayne County, Michigan
My Commission expires: 10/9/2014

LINDSAY A. WALTERS
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Oct 9, 2014
ACTING IN COUNTY OF Wayne


ADAM WIENER

STATE OF MICHIGAN)
COUNTY OF Wayne)

Subscribed and sworn to before me this 31 day of March 2013 by Adam Wiener, individually.


_____, Notary Public
_____, Michigan
Acting in Wayne County, Michigan
My Commission expires: 10/9/2014

LINDSAY A. WALTERS
NOTARY PUBLIC, STATE OF MI
COUNTY OF WAYNE
MY COMMISSION EXPIRES Oct 9, 2014
ACTING IN COUNTY OF Wayne




DOMINIC FALSETTI

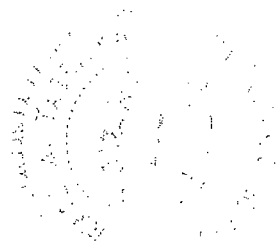
DOMINICK G. FALSETTI

STATE OF MICHIGAN)
COUNTY OF Monroe)

Subscribed and sworn to before me this 5th day of ^{April}~~March~~ 2013 by Dominic Falsetti, individually.



Rose M. T. Downing, Notary Public
Monroe, Michigan
Acting in Monroe County, Michigan
My Commission expires: 08-08-2018



KEITH STONE

STATE OF MICHIGAN)
COUNTY OF _____)

Subscribed and sworn to before me this _____ day of March 2013 by Keith Stone,
individually.

_____, Notary Public
_____, Michigan
Acting in _____ County, Michigan
My Commission expires: _____

JONATHAN SIRKEN

STATE OF MICHIGAN)
COUNTY OF _____)

Subscribed and sworn to before me this _____ day of March 2013 by Jonathan
Sirken, individually.

_____, Notary Public
_____, Michigan
Acting in _____ County, Michigan
My Commission expires: _____

 4-15-13

NATHAN ZAUTCKE

STATE OF MICHIGAN)
COUNTY OF _____)

Subscribed and sworn to before me this _____ day of March 2013 by Nathan Zautcke, individually.

_____, Notary Public
_____, Michigan
Acting in _____ County, Michigan
My Commission expires: _____

ADAM WIENER

STATE OF MICHIGAN)
COUNTY OF _____)

Subscribed and sworn to before me this _____ day of March 2013 by Adam Wiener, individually.

_____, Notary Public
_____, Michigan
Acting in _____ County, Michigan
My Commission expires: _____

 4-15-13

DOMINIC FALSETTI

STATE OF MICHIGAN)
COUNTY OF _____)

Subscribed and sworn to before me this _____ day of March 2013 by Dominic
Falsetti, individually.

_____, Notary Public
_____, Michigan
Acting in _____ County, Michigan
My Commission expires: _____


4-15-13

EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

DANIEL P. KANAAN,

Plaintiff,

v

Case No. 2:12-cv-11680-JCO-LJM

Hon. John Corbett O'Meara

Magistrate Laurie J. Michelson

**MICHAEL A. FALSETTI, KRISTIN
JOHNSON, KEITH STONE, JONATHAN
SIRKEN, NATHAN ZAUTCKE, ADAM
WIENER, DOMINIC FALSETTI,
ADVANCED COMMUNICATIONS, INC.**
a Michigan corporation, **M&D AUTO, LLC**,
a Michigan limited liability company,
FKS PROPERTIES, LLC, a Michigan
limited liability company, **FALKAN
ENTERPRISES, LLC**, a Michigan
limited liability company; and **UNNAMED
COCONSPIRATORS JOHN and JANE
DOES 1 through 100**, jointly and individually,

AFFIDAVIT OF LYNN M. BRIMER

Defendants.

AFFIDAVIT OF LYNN M. BRIMER

STATE OF MICHIGAN)
)ss
COUNTY OF OAKLAND)

Lynn M. Brimer, being first duly sworn, deposes and states as follows:

1. On February 28, 2014, I forwarded to Falsetti's counsel a copy of the Strobl & Sharp, PC ("Strobl") invoice reflecting the fees billed to Kanaan through January 31, 2014 in connection with the M&D trust fund taxes (the "February Invoice"), in the amount of \$7,519.50. See Exhibit 1. The February Invoice reflected billings from April 1, 2012 through January 31, 2013.

2. On March 5, 2014, I forwarded to Falsetti's counsel the February Invoice along with the invoice reflecting the February 2014 billing associated with the M&D trust fund taxes (the "March Invoice") in the amount of \$1,734.00 for a total due of \$9,253.50. See Exhibit 2.

3. On April 3, 2014, I forwarded to Falsetti's counsel the February Invoice, the March Invoice and the invoice reflecting the March billing on the M&D trust fund taxes (the "April Invoice") in the amount of \$782.00 for a total balance due to Kanaan in connection with his legal fees in the amount of \$10,035.00 as of March 31, 2014. See Exhibit 3.

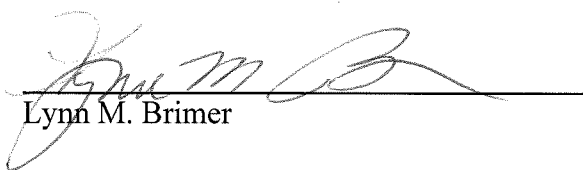
4. On April 11, 2014, I forwarded a follow up demand to Falsetti's counsel regarding the status of the payment of the Strobl fees due to Kanaan under the indemnification provisions of the Settlement Agreement entered into in the above-styled matter.

5. I have received no response from Falsetti's counsel regarding the payment of the legal fees due to Kanaan.

6. More than 10 business days have passed since the last demand was made on Falsetti's counsel regarding the payment of the legal fees.

7. Falsetti has continued to fail to cure the past due amount due to Kanaan in connection with the legal fees incurred by Kanaan in connection with the M&D trust fund tax liabilities.

FURTHER AFFIANT SAYETH NOT.


Lynn M. Brimer

Subscribed and sworn to before me
this 1st day of May, 2014.



Karel J. Van Akin, Notary Public
County of Oakland, State of Michigan
My Commission Expires: 11/13/2019
Acting in Oakland County, Michigan

EXHIBIT 1

Lynn M. Brimer

From: Lynn M. Brimer
Sent: Friday, February 28, 2014 12:42 PM
To: 'Fred Foley'
Subject: RE: Affidavit
Attachments: kanaan 2-1-2014 invoice M D Auto (SB448888@xB7BE6).pdf

Fred: thanks for preparing the Affidavit. I have a follow up call with the Appeals Officer on March 7th. I have attached the invoice that I believe was previously sent relative to the M&D tax issues through January 31st. I have removed the billings that related solely to the ACI tax issues. Please let me know when your client will be making the payment on this invoice.

Thanks,
Lynn

-----Original Message-----

From: Fred Foley [mailto:ffoley@refslaw.com]
Sent: Friday, February 28, 2014 12:09 PM
To: Michael A. Falsetti (mfalsetti@vercomconsulting.com)
Cc: Lynn M. Brimer
Subject: FW: Affidavit

02-28-14

Mike:

With this e-mail I am forwarding to you an affidavit regarding the role of Mr. Kanaan in the the affairs of M&D Auto.

If it is acceptable to you, sign it and return it to me. I will then forward the signed copy to Lynn Brimer for her use on behalf of Mr. Kanaan in the proceeding that is currently pending before the Appeals Office of the IRS.

If you have any questions or proposed changes, please contact me.

Fred A. Foley, Esq.
Ehrlich & Foley P.C.
33 Bloomfield Hills Parkway
Suite 290
Bloomfield Hills, Michigan 48304-2945
248-540-0100 Office
248-540-2112 Fax
ffoley@refslaw.com

The information contained in this communication is attorney privileged and confidential information intended only for the use of the individuals or entity named above. If the reader of this message is not the intended recipient, or the employee or agent of the intended recipient, the reader is hereby notified that any dissemination, distribution or

copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone.

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If this communication contains statements concerning taxation, those statements are provided for information purposes only, are not intended to constitute tax advice which may be relied upon to avoid penalties under any federal, state, local or other tax statutes or regulations, and do not resolve any tax issues in your favor. Upon request, we can provide you with express written tax advice after necessary factual development and subject to such conditions and qualifications as we may deem appropriate in the circumstances.

-----Original Message-----

From: scanner@eliteimagingsystem.com [mailto:scanner@eliteimagingsystem.com]

Sent: Friday, February 28, 2014 12:06 PM

To: Fred Foley

Subject:

CS 4550ci

[00:c0:ee:87:a5:eb]

STROBL & SHARP
Professional Corporation
300 East Long Lake Road, Suite 200
Bloomfield Hills, MI 48304-2376
Phone (248)540-2300 Fax(248)645-2690

February 1, 2014

Daniel P. Kanaan
1480 Crowndale
Canton, MI 48188

Invoice# 138674B LMB
Our file# 85123 00001

Billing through 01/31/2014
Federal Tax # 38-2894736

M&D Tax Matters

PROFESSIONAL SERVICES

04/11/2012	LMB	Various calls with Mason re: ACI and Related entity tax issues	1.20 hrs.	\$390.00
04/23/2012	LMB	Follow up with Mason	0.80 hrs.	\$260.00
09/05/2012	LMB	Call with P. Mason re: ACI tax liabilities and related entity investigation; call with client re: same	0.80 hrs.	\$260.00
01/10/2013	LMB	Review notice of intent to levy re: M&D Auto; call with counsel for PNC re: same. Calls to IRS re: notice of intent to levy re: M&D tax liabilities.	2.00 hrs.	\$650.00
01/11/2013	LMB	Calls with counsel for PNC re: M&D tax issues; calls with client re: same	1.30 hrs.	\$422.50
1/14/2013	LMB	Review historical M&D tax returns re:	1.50 hrs.	\$487.50
03/07/2013	LMB	Review correspondence re: M&D Auto federal taxes; call with RO re: same; call with client re: same	1.00 hrs.	\$325.00
03/11/2013	LMB	Meeting with client re: various tax issues	2.00 hrs.	\$650.00
03/15/2013	LMB	Calls with Molloy and client re: trust fund recovery penalty	0.60 hrs.	\$195.00
04/29/2013	LMB	Attend 4180 interview with client re: M&D Auto trust fund taxes	4.00 hrs.	\$1,300.00
05/01/2013	LMB	Call with revenue officer re: status of M&D investigation	0.30 hrs.	\$97.50
08/12/2013	LMB	Review 1163 Letter from IRS; call with RO; conference with JMS call with client re: same.	0.60 hrs.	\$195.00

Kanaan	85123	Invoice#	138674B	LMB	Page 2
08/12/2013	JMS	Conference with LMB re: Protest; review files re: background information		0.50 hrs.	\$62.50
08/20/2013	JMS	Begin drafting Protest		1.50 hrs.	\$187.50
09/10/2013	JMS	Finalize draft Protest re: M&D Auto		1.25 hrs.	\$156.25
09/30/2013	LMB	Review/revise and finalize Protest to M&D Auto trust fund recovery penalty		2.50 hrs.	\$812.50
10/15/2013	LMB	Call with Molloy re: response to Protest and referral to Appeals; Call with client re: same.		0.50 hrs.	\$162.50
12/05/2013	LMB	Review notice from State of Michigan re: M&D unpaid tax liability		0.60 hrs.	\$195.00
12/06/2013	LMB	Calls to State warrant officer re: M&D		0.30 hrs.	\$97.50
12/11/2013	LMB	Follow up call to warrant officer		0.25 hrs.	\$81.25
12/18/2013	LMB	Call with Malloy re: status of tax return filing and trust fund investigation/assessments		0.80 hrs.	\$260.00
01/07/2014	LMB	Call to State of Michigan re: status		0.30 hrs.	\$102.00
01/22/2014	LMB	Call to IRS Appeals re: status of assignment of protest; call with client re: same		0.50 hrs.	\$170.00

Total Fees: \$7,519.50

BILLING SUMMARY

Total fees \$7,519.50

Total disbursements

Total balance now due \$7,519.50

Payment is due upon receipt

EXHIBIT 2

Lynn M. Brimer

From: Lynn M. Brimer
Sent: Wednesday, March 05, 2014 3:06 PM
To: davidgriemlaw@gmail.com
Subject: Falsetti invoices
Attachments: 20140301090440640.pdf; Kanaan M D Tax Matters Invoice 12-6-13 - 1-31-14 (SB446451 @xB7BE6).pdf

Follow Up Flag: Follow up
Flag Status: Flagged

David: I understand from Fred that you are handling the payment of the fees by Mike under the indemnification provisions in the settlement agreement. I have attached the revised invoice covering the period April 2012 through January 31, 2014 with the entries solely related to ACI removed and the March 1 2014 invoice. Please let me know when Mr. Falsetti will be making the payment on the invoices.

Thanks,
Lynn

-----Original Message-----

From: administrator@strolpc.com [mailto:administrator@strolpc.com]
Sent: Saturday, March 01, 2014 9:05 AM
To: Lynn M. Brimer
Subject: Message from "RNP43950A"

This E-mail was sent from "RNP43950A" (Aficio MP 6001).

Scan Date: 03.01.2014 09:04:40 (-0500)
Queries to: administrator@strolpc.com

STROBL & SHARP
Professional Corporation
300 East Long Lake Road, Suite 200
Bloomfield Hills, MI 48304-2376
Phone (248)540-2300 Fax(248)645-2690

March 1, 2014

Daniel P. Kanaan
1480 Crowndale
Canton, MI 48188

Invoice# 138674C LMB
Our file# 85123 00001

Billing through 02/28/2014

Federal Tax # 38-2894736

M&D Tax Matters

Balance forward as of invoice dated February 1, 2014: ***\$7,519.50***

Accounts receivable balance carried forward: ***\$7,519.50***

PROFESSIONAL SERVICES

02/06/2014	LMB	Review correspondence from Appeals Officer, call to Appeals re: same.	0.30 hrs.	\$102.00
02/19/2014	LMB	Appeals Conference. Follow up review of file and case law re: appeals position re: responsibility of owner in closely held corp.	2.50hrs.	\$850.00
02/20/2014	LMB	Continued review of case law; review email history discussions with counsel for PNC re: satisfaction of taxes at closing with PNC, including representations regarding M&D; review correspondence and email re: knowledge.	2.00 hrs.	\$680.00
02/28/2014	LMB	Review email correspondence from Foley and proposed affidavit from Falsetti.	0.30 hrs.	\$102.00

Total Fees: **\$1,734.00**

BILLING SUMMARY

Total fees	\$1,734.00
Total disbursements	
Balance carried forward:	\$7,519.50
Total balance now due	\$9,253.50

Payment is due upon receipt

STROBL & SHARP
Professional Corporation
300 East Long Lake Road, Suite 200
Bloomfield Hills, MI 48304-2376
Phone (248)540-2300 Fax(248)645-2690

February 1, 2014

Daniel P. Kanaan
1480 Crowndale
Canton, MI 48188

Invoice# 138674B LMB
Our file# 85123 00001

Billing through 01/31/2014
Federal Tax # 38-2894736

M&D Tax Matters

PROFESSIONAL SERVICES

04/11/2012	LMB	Various calls with Mason re: ACI and Related entity tax issues	1.20 hrs.	\$390.00
04/23/2012	LMB	Follow up with Mason	0.80 hrs.	\$260.00
09/05/2012	LMB	Call with P. Mason re: ACI tax liabilities and related entity investigation; call with client re: same	0.80 hrs.	\$260.00
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01/11/2013	LMB	Calls with counsel for PNC re: M&D tax issues; calls with client re: same	1.30 hrs.	\$422.50
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03/07/2013	LMB	Review correspondence re: M&D Auto federal taxes; call with RO re: same; call with client re: same	1.00 hrs.	\$325.00
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03/15/2013	LMB	Calls with Molloy and client re: trust fund recovery penalty	0.60 hrs.	\$195.00
04/29/2013	LMB	Attend 4180 interview with client re: M&D Auto trust fund taxes	4.00 hrs.	\$1,300.00
05/01/2013	LMB	Call with revenue officer re: status of M&D investigation	0.30 hrs.	\$97.50
08/12/2013	LMB	Review 1163 Letter from IRS; call with RO; conference with JMS call with client re: same.	0.60 hrs.	\$195.00

Kanaan	85123	Invoice#	138674B	LMB	Page 2
08/12/2013	JMS	Conference with LMB re: Protest; review files re: background information	0.50 hrs.	\$62.50	
08/20/2013	JMS	Begin drafting Protest	1.50 hrs.	\$187.50	
09/10/2013	JMS	Finalize draft Protest re: M&D Auto	1.25 hrs.	\$156.25	
09/30/2013	LMB	Review/revise and finalize Protest to M&D Auto trust fund recovery penalty	2.50 hrs.	\$812.50	
10/15/2013	LMB	Call with Molloy re: response to Protest and referral to Appeals; Call with client re: same.	0.50 hrs.	\$162.50	
12/05/2013	LMB	Review notice from State of Michigan re: M&D unpaid tax liability	0.60 hrs.	\$195.00	
12/06/2013	LMB	Calls to State warrant officer re: M&D	0.30 hrs.	\$97.50	
12/11/2013	LMB	Follow up call to warrant officer	0.25 hrs.	\$81.25	
12/18/2013	LMB	Call with Malloy re: status of tax return filing and trust fund investigation/assessments	0.80 hrs.	\$260.00	
01/07/2014	LMB	Call to State of Michigan re: status	0.30 hrs.	\$102.00	
01/22/2014	LMB	Call to IRS Appeals re: status of assignment of protest; call with client re: same	0.50 hrs.	\$170.00	

Total Fees: \$7,519.50

BILLING SUMMARY

Total fees \$7,519.50

Total disbursements

Total balance now due \$7,519.50

Payment is due upon receipt

EXHIBIT 3

Lynn M. Brimer

From: Lynn M. Brimer
Sent: Thursday, April 03, 2014 5:50 PM
To: davidgriemlaw@gmail.com
Subject: Kanaan Legal Fees
Attachments: Kanaan tax matters-M D invoice 4-1-2014 (SB453057@xB7BE6).pdf

David: attached is the most recent Strobl & Sharp invoice relative to the proposed assessment against Dan of the M&D Auto trust fund recovery penalty. I have not received the Appeals Officer's determination letter yet – I am optimistic that this will conclude the federal issue, but will not have that answer until we have the final determination letter.

As you will note, the balance due on the fees is \$10,035.50. We will agree to a payment in equal monthly installments over five months. We would like Mr. Falsetti to agree to a future advance (to cover fees in the event the IRS proceeds with the assessment against Dan) note secured by his home on Chatham Dr. I assume there are tax liens against the home based on Mr. Falsetti's representation that he agreed to the IRS tax assessment and we understand the note would be behind the tax liens.

If this is acceptable, I will draft the documents and get them to you for review.

Thanks,
Lynn

Lynn M. Brimer
Strobl & Sharp, P.C.
300 East Long Lake Road, Suite 200
Bloomfield Hills, MI 48304-2376
(248) 540-2300
Direct: (248) 205-2772
Fax: (248) 645-2690
E-Mail: lbrimer@stroblpc.com
www.stroblpc.com

The following warning is required by the IRS whenever tax advice is given: in accordance with United States Treasury Regulation Circular 230 Disclosure: to ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein

STROBL & SHARP
Professional Corporation
300 East Long Lake Road, Suite 200
Bloomfield Hills, MI 48304-2376
Phone (248)540-2300 Fax(248)645-2690

April 1, 2014

Daniel P. Kanaan
1480 Crowndale
Canton, MI 48188

Invoice# 138674D LMB
Our file# 85123 00001

Billing through 03/31/2014
Federal Tax # 38-2894736

M&D Tax Matters

Balance forward as of invoice dated February 1, 2014: ***\$9,253.50***
Accounts receivable balance carried forward: ***\$9,253.50***

PROFESSIONAL SERVICES

03/05/2014	LMB	Prepare and forward supplemental information to Appeals Officer re: M&D TFRP.	0.60 hrs.	\$204.00
03/07/2014	LMB	Prepare for and participate in follow up Appeals Conference: M&D TFRP.	1.50hrs.	\$476.00
03/12/2014	LMB	Follow up with client re: status of Appeal Conference.	0.30 hrs.	\$102.00

Total Fees: \$782.00

BILLING SUMMARY

Total fees	\$782.00
Total disbursements	
Balance carried forward:	\$9,253.50

Total balance now due \$10,035.50

Payment is due upon receipt